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# THE FEDERAL LAW ENFORCEMENT - INFORMER -

A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW  
ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at [FLETC-LegalTrainingDivision@dhs.gov](mailto:FLETC-LegalTrainingDivision@dhs.gov). You can join *The Informer* Mailing List, have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting <https://www.fletc.gov/legal-resources>.

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## FLETC Informer Webinar Schedule - June 2020

### **1. Thermal Imaging - Is it a Search in 2020? (1-hour)**

Presented by Mary Mara and Henry W. McGowen, Attorney-Advisors/Senior Instructors, Federal Law Enforcement Training Centers, Artesia, New Mexico.

In Kyllo v. United States, 533 U.S. 27 (2002), the Supreme Court held that when law enforcement uses thermal imaging to “look” into a house, an area where a person has a reasonable expectation of privacy, it constitutes a search under the Fourth Amendment and therefore requires a search warrant. One of the reasons provided by the Court in its holding was the cost and availability of the high-tech equipment needed to conduct thermal imaging. In 2020 the availability of thermal imaging technology has increased while the cost has decreased. So, is thermal imaging still considered a search in light of the technological advancements of the past 20 years? Please join us as we work through these issues together.

**Wednesday, June 3, 2020: 3 p.m. Eastern / 2 p.m. Central / 1 p.m. Mountain / 12 p.m. Pacific**

To participate in this webinar: <https://share.dhs.gov/jun>



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## **Cybercrime & Technical Investigations Training Conference 2020**

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For additional details concerning attendee registration, conducting a presentation for CYCON-2020, or conducting a vendor product demonstration please see the FLETC CYCON-2020 website:

<https://www.fletc.gov/cybercrime-and-technical-investigations-training-conference>



## **FLETC Office of Chief Counsel Podcast Series**

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A Flash History of the Fourth Amendment What is a Fourth Amendment Search? What is a Fourth Amendment Seizure? Fourth Amendment Levels of Suspicion Stops and Arrests Plain View Seizures Mobile Conveyance (Part 1 and Part 2)
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Exigent Circumstances Frisks Searches Incident to Arrest (SIA) Consent (Part 1 and Part 2) Inventories Inspection Authorities
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# CASE SUMMARIES

## Circuit Courts of Appeal

### United States Supreme Court

#### N.Y. State Rifle & Pistol Ass'n v. City of N.Y., 140 S. Ct. 1525 (2020)

In 2013, three New York City residents who had licenses to possess guns in their homes as well as an association of New York gun owners (collectively, the “plaintiffs”), sued the City of New York. The plaintiffs challenged a city ordinance banning the transportation of licensed handguns outside the city. The plaintiffs argued that the ordinance violated the Second Amendment because it banned them from taking their guns to shooting ranges and weekend homes outside the city.

The district court and the Second Circuit Court of Appeals upheld the ban. After the United States Supreme Court agreed to hear the case, the city amended its regulations to allow licensed handgun owners to transport their guns to, among other places, second homes and shooting ranges outside New York City. Similarly, the State of New York enacted legislation, which allows licensed gun owners to transport handguns from their home to other places such as second homes, shooting ranges, and shooting competitions.

Subsequently, the city informed the Supreme Court that the plaintiffs’ challenges to the city’s ban on transporting guns outside the city limits was moot because of the changes to city and state law. Typically, the Supreme Court will not decide a case when there is no longer a “live controversy” between the parties that needs to be resolved. However, the plaintiffs urged the Court not to dismiss their appeal. The plaintiffs argued, among other things, the case was not moot because the city’s position was that it can regulate the transport of licensed guns without regard for the Second Amendment. The Supreme Court rejected the city’s request to dismiss the case as moot and heard oral argument on December 2, 2019.

On April 27, 2020, the Supreme Court found that the plaintiffs received the outcome they desired from their lawsuit after the State of New York amended its firearm licensing statute when the City of New York amended the rule to allow permitted persons to lawfully transport firearms to a second home or shooting range outside of the city. Consequently, the court held that the plaintiffs’ request for an injunction concerning the city’s old rule was moot and dismissed the case. The Court declined to rule upon whether the plaintiffs could seek damages for the city’s violation of their rights under the old rule.

For the court’s opinion: [https://www.supremecourt.gov/opinions/19pdf/18-280\\_ba7d.pdf](https://www.supremecourt.gov/opinions/19pdf/18-280_ba7d.pdf)

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### First Circuit

#### Castagna v. Jean, 955 F.3d 211 (1st Cir. 2020)

On March 17, 2013, Boston police officers went to an apartment after someone called 911 and complained about a loud party occurring nearby. As the officers approached the apartment, they heard loud music and saw a young man stumble outside onto the public sidewalk, vomit, and then

stumble back into the apartment. When the officers reached the apartment, the front door was open and the officers saw people drinking, some of whom they believed to be underage. The officers stood at the open front door and announced their presence. After no one answered, the officers entered the apartment to: 1) respond to the noise complaint by finding the owners and having them lower the volume of their music and, 2) make sure that any underage drinkers were safe, including a young man who had vomited outside the home and returned inside.

Once inside the apartment, the officers eventually located the hosts of the party, Christopher and Gavin Castagna. After a brief verbal and physical altercation, the officers arrested the Castagna brothers and several partygoers on a variety of charges.

The Castagnas sued the officers for, among other things, entering their apartment without a warrant, in violation of the Fourth Amendment, which ultimately led to their arrests. After the district court denied the officers qualified immunity, the officers appealed. The First Circuit Court of Appeals reversed the district court and held that the officers did not violate the Fourth Amendment because the officers lawfully entered the apartment through the open door under the community caretaking exception to the warrant requirement.

In [Cady v. Dombrowski](#), the Supreme Court recognized that police officers frequently engage in “community caretaking functions” that have no relationship to the detection, investigation, or acquisition of evidence relating to criminal violations. Since [Cady](#), the community caretaking doctrine has become a catch-all for a wide range of responsibilities that police officers must discharge in addition to their criminal enforcement duties. Accordingly, in [Caniglia v. Strom](#) (*see* [4 INFORMER 20](#)), the First Circuit Court of Appeals held that the community caretaker exception applied to officers’ warrantless entry into a house to seize firearms after it was determined that the homeowner posed a threat to himself and needed to be transported to a hospital for psychiatric evaluation.

Applying the facts of the case to the analysis outlined in [Caniglia](#), this court held that when the officers entered the apartment they did so under the lawful community caretaking exception. When the officers arrived, they saw a guest, whom appeared underage, leave the apartment, vomit, and then reenter the apartment. In addition, the party was loud enough to be heard from the street. The court found that the officers needed to get the attention of the homeowner(s) because they were ultimately responsible for the impact the party had on the neighborhood and because the presence of underage drinkers posed a safety risk. The court concluded that any expectation of privacy in the home was greatly diminished given the open front door, the evident lack of supervision by the homeowner(s) of guests trafficking in and out of the home, and the owner’s failure to respond to the officers. As a result, the court held that it was reasonable for the officers to enter the apartment through the open front door and attempt to locate the homeowner to address these issues.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca1/19-1677/19-1677-2020-04-10.pdf?ts=1586550605>

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## **Third Circuit**

### **James v. N.J. State Police, 957 F.3d 165 (3d Cir. 2020)**

Willie Gibbons lived with Angel Stephens. After the two had a domestic argument, Stephens obtained a temporary restraining order against Gibbons. The order prohibited Gibbons from possessing firearms and from returning to Stephens' house.

The day after the court instated the protective order, Gibbons requested a police escort to retrieve his possessions from Stephens' house; the police told him that he needed judicial approval for the visit. Instead of obtaining judicial approval, Gibbons drove to Stephens' house in violation of the restraining order. When Gibbons arrived, Stephens was speaking with a friend on the phone. The friend called the police to report that Gibbons had violated the restraining order. Gibbons then left Stephens' house after the two had an argument.

When a state trooper arrived, Stephens told him that Gibbons had waved a gun throughout their argument. The trooper told Stephens to go to the police barracks and file a complaint against Gibbons. Afterward, several troopers, including Trooper Bartelt visited Arlane James, Gibbons' mother. James told the troopers that she did not know where her son was and that he may be off his medication.

While Stephens was driving to the police barracks, she saw Gibbons walking alongside the road and called 911, reporting his location. Trooper Bartelt arrived a short time later and as he approached Gibbons in his patrol car, he heard Gibbons say, "stay away from me." Trooper Bartelt parked his car and while exiting saw that Gibbons was holding a gun in his left hand and pointing it directly at his own head. Trooper Bartelt drew his firearm, stood behind his car door, twice told Gibbons to drop his weapon, and ordered him to "come over here." Gibbons did not comply with the commands and may have repeated, "stay away from me." From a distance of seven to fifteen yards, Trooper Bartelt fired two shots, striking Gibbons. Trooper Bartelt shot Gibbons within seconds of stopping his car. Another trooper arrived on the scene moments before Trooper Bartelt fired the shots. Gibbons later died at the hospital.

Arlane James filed a lawsuit claiming that Trooper Bartelt violated the Fourth Amendment by using excessive force against her son. The district court denied Trooper Bartelt qualified immunity. Trooper Bartelt appealed.

The Supreme Court has held that a police officer is entitled to qualified immunity as long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." In addition, the Court explained, that in most cases "clearly established means that, at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." Although, in rare cases, the Court added that a plaintiff may show that the right is clearly established if the "violation [is] 'obvious.'"

In this case, when Trooper Bartelt approached Gibbons, he knew that Gibbons: (1) had violated a restraining order; (2) was in possession of a firearm that he had brandished within the last hour; and (3) was reportedly mentally ill and may not have been taking his medication. The Third Circuit Court of Appeals held that Trooper Bartelt did not violate a clearly established right because at the time of the incident no Supreme Court precedent, Third Circuit precedent, or other persuasive case law had held that an officer acting under similar circumstances as Trooper Bartelt

violated the Fourth Amendment. As a result, the court held that Trooper Bartelt was entitled to qualified immunity.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca3/18-1432/18-1432-2020-04-21.pdf?ts=1587488408>

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## **Fifth Circuit**

### **Garcia v. Blevins, 2020 U.S. App. LEXIS 13926 (5th Cir. Apr. 30, 2020)**

Philip Garcia went to a restaurant with some friends after attending a sporting event. At the restaurant, Garcia's group got into an argument with another group of patrons. Restaurant security, including Officer Blevins, who had a department approved security job at the restaurant, asked both groups to leave. The groups left, but another scuffle flared up on the restaurant's outdoor patio. Officer Blevins and another security guard again told the group to leave so the group went to the parking lot where they continued to fight.

At this point, Garcia, who had been challenged to a fight, ran to a friend's parked car and retrieved a handgun. A woman told Officer Blevins and the other security guards that someone in the parking lot had a gun. Officer Blevins requested police backup over his radio and went to investigate.

In the parking lot, Officer Blevins approached Garcia who was holding a t-shirt in his left hand and a pistol in his right hand. Officer Blevins drew his firearm and ordered Garcia to drop his gun. Garcia ignored Officer Blevins, walked between two parked cars and stopped near the restaurant's dumpster where two other people were standing. It appeared that one of individuals was Garcia's friend. Garcia tried to get the man to take the gun from him. The man refused, stepped away from Garcia, and raised his hands. Officer Blevins stated that as the man stepped away from Garcia, Garcia raised his gun toward Blevins. In response, Officer Blevins fired multiple shots at Garcia, striking him in the chin, chest, and abdomen. Garcia died on the way to the hospital. Although there were conflicting witness accounts of the shooting it was undisputed that Garcia never dropped his gun as ordered.

Garcia's parents (the plaintiffs) sued the Houston Police Department and Officer Blevins under 42 U.S.C. § 1983 alleging an excessive use of force in violation of the Fourth Amendment. The district court granted Officer Blevins qualified immunity and dismissed the case. The plaintiffs appealed.

Government officials, to include police officers are entitled to qualified immunity as long as "their conduct does not violate clearly established statutory or constitutional rights." To determine whether an officer is entitled to qualified immunity the court must decide: 1) whether the facts, as alleged by the plaintiff, establish that "the officer's conduct violated a constitutional right" and, 2) whether the right was clearly established at the time of the incident. The plaintiff has the burden of showing that the right was clearly established and, importantly, the court can analyze the "prongs" in either order or resolve the case by analyzing only of the prongs.

The Fifth Circuit Court of Appeals agreed with the district court, which held that the plaintiffs did not satisfy the second prong of the test; specifically, that Officer Blevins did not violate a clearly established right when he shot Garcia. The Supreme Court has held that to be "clearly



established,” a right must be “sufficiently clear that every reasonable official would have understood that what he is doing violates that right.”

The court in this case considered that Officer Blevins twice broke up fighting in which Garcia was involved, and was soon after told that someone in the adjacent parking lot had a gun. When he went to investigate, Officer Blevins saw Garcia, with a gun in his hand, walking towards other people in the parking lot. When Officer Blevins ordered Garcia to drop the gun, Garcia ignored him, ducked between parked vehicles, and tried to give the gun to someone else. The court found that, even under the plaintiffs’ version of events, it was undisputed that Garcia refused to drop the gun when ordered to do so by Officer Blevins and that Garcia could have quickly pointed it at him. The court stated, “[w]e have never required officers to wait until a defendant turns towards them, with weapon in hand, before applying deadly force to ensure their safety.” Consequently, the court held that Officer Blevins was entitled to qualified immunity because he did not violate clearly established law.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca5/19-20494/19-20494-2020-04-30.pdf?ts=1588267854>

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## **Sixth Circuit**

### **United States v. May-Shaw, 955 F.3d 563 (6th Cir. 2020)**

Police officers decided to conduct surveillance on the exterior of Christopher May-Shaw’s apartment complex and adjacent parking lot after receiving information that May-Shaw was involved in drug trafficking. The parking lot contained covered carports, the interiors of which were easily viewable from a vantage point on a public road outside the parking lot. May-Shaw often parked his vehicles under a covered carport close to the entrance to his apartment building.

After the owner of the apartment complex gave officers permission to conduct physical and video surveillance of the parking lot, they parked a van in the lot that contained remotely operated cameras. Utilizing this method, officers observed May-Shaw loading and unloading drugs and cash from his BMW and engaging in what they believed to be drug deals in the parking lot.

In addition to their surveillance from the van, officers installed a camera on a telephone pole located on the public road outside of the parking lot. The camera, which recorded continuously for 23 days, produced video as well as still shots. The pole-camera footage captured May-Shaw engaging in what officers suspected were drug transactions in the parking lot. After witnessing these suspected drug transactions, an officer brought his drug-detection dog into the carport and conducted a dog-sniff of May-Shaw’s BMW. The dog alerted to the odor of narcotics.

Based on the surveillance and dog-sniff, officers obtained a warrant to search May-Shaw’s apartment and three vehicles, including the BMW. The officers subsequently found drugs, cash, drug paraphernalia, and drug packaging material. The government charged May-Shaw with several drug-related offenses.

May-Shaw filed a motion to suppress the evidence seized from his apartment and vehicles. May-Shaw claimed that the pole camera surveillance constituted an unreasonable warrantless search in violation of the Fourth Amendment.

The court disagreed, holding that May-Shaw had no reasonable expectation of privacy in the carport; therefore, the use of the pole camera did not constitute a Fourth Amendment search. The court noted that Sixth Circuit case law has consistently held that the type of warrantless surveillance conducted by the officers in this case does not violate the Fourth Amendment. For example, in [U.S. v. Houston](#), the court held that warrantless video surveillance of the defendant's front porch, which was unquestionably within the curtilage of his home, did not violate his reasonable expectation of privacy because the camera "captured only views that were plainly visible to any member of the public who drove down the roads bordering his home."

Similarly, in this case, the court found that the footage from the pole camera only revealed what May-Shaw did in a public space, i.e. the parking lot. The camera captured images of May-Shaw moving items from his car to his apartment and conducting other activities that were possible for any member of the public to have observed. Consequently, the court held that the use of the pole camera for 23 days did not violate May-Shaw's Fourth Amendment rights.

Next, May-Shaw claimed that the use of the drug-detecting dog to sniff his BMW while it was parked in the carport constituted an unlawful search under the Fourth Amendment because the carport was within the curtilage of his apartment.

The court recognized, "it is well-settled that the warrantless search of a home's curtilage with a drug-sniffing dog violate[s] the Fourth Amendment." To determine if an area falls within the curtilage of a home, the court was required to examine four factors: 1) the proximity of the area to the home, 2) whether the area is within an enclosure around the home, 3) how that area is used, and 4) what the owner has done to protect the area from observation from passersby.

In this case, the court found that the proximity of the carport to May-Shaw's apartment and the fact that the carport was not located within an enclosure that surrounded his apartment weighed against May-Shaw. Second, although May-Shaw regularly parked his car in the carport, he did not have any legal right to exclude others from it. Finally, because officers could see into the carport from the pole camera, it was apparent that May-Shaw did not take significant steps to protect the area from observation. Based on these facts, the court held that the carport was not within the curtilage of May-Shaw's apartment; therefore, the drug dog sniff did not constitute a search under the Fourth Amendment.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca6/18-1821/18-1821-2020-04-08.pdf?ts=1586374215>

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## **Seventh Circuit**

### **Siler v. City of Kenosha, 2020 U.S. App. LEXIS 13750 (7th Cir. Apr. 29, 2020)**

Officer Torres was on patrol when he received a call from dispatch requesting assistance apprehending Aaron Siler. The dispatcher told Officer Torres that there was a warrant for Siler for "strangulation and suffocation," that Siler had taken a vehicle without consent, and that Siler was known to have violent tendencies. When Officer Torres saw Siler driving through an intersection, he activated his emergency lights and sirens and attempted to stop him. Siler did not stop but instead led Officer Torres on a pursuit which lasted approximately three minutes and ended when Siler crashed his car. At this point, Siler fled on foot and Officer Torres exited his patrol car and chased him. At the time, Officer Torres was forty-two years old, stood five feet

and seven inches tall, and weighed 155 pounds while Siler was twenty-six years old, six feet and four inches tall, and weighed 243 pounds. Siler ignored Officer Torres' commands to "stop" and "get on the ground" and ran into a garage of an auto body repair shop.

When Officer Torres entered the garage he encountered two men, one of whom indicated that Siler had entered a back room. When Officer Torres ordered Siler to come out, Siler exited the back room and attempted to flee through the open garage door, however Officer Torres, who was standing in the open doorway, blocked the exit. At this point Siler moved to the passenger side of an SUV that was parked in the garage while Officer Torres moved to the driver side of the SUV and ordered Siler to get on the ground. After Siler refused, the men began to move back and forth in a "cat and mouse" fashion along their respective sides of the SUV. Throughout this "cat and mouse" exchange, Siler had an unobstructed path to his left that led to the open garage door.

By this time, Officer Torres had his pistol pointed at Siler and ordered him to the ground. Siler refused, responding, "fuck you," "no," and "shoot me." Siler then bent over and when he stood up, Officer Torres saw a black cylindrical object pressed against Siler's forearm. Again, Officer Torres yelled at Siler to "drop it" and "get to the ground," to which Siler again responded as he had previously. Siler bent down a second time and made a grabbing motion.

While still on the passenger side of the SUV, Siler made a step to his right, toward Officer Torres, which was in the opposite direction of the open garage door. At this time, there were approximately ten to twelve feet between the men and Officer Torres could not see Siler's hands. When Siler stepped to the right, Officer Torres fired seven shots at Siler, striking him six times in the upper torso. Siler died from gunshot wounds. Approximately thirty seconds elapsed from the time Siler exited the back room in the garage until Officer Torres shot him.

Siler's daughter (plaintiff) sued Officer Torres claiming that his use of deadly force against Silver was unreasonable. The district court granted Officer Torres qualified immunity and the plaintiff appealed.

Citing [Tennessee v. Garner](#), the Seventh Circuit Court of Appeals stated that, at the time of the shooting, "if a reasonable officer in Officer Torres' shoes would have believed that Mr. Siler posed an imminent threat of serious physical harm, or that he had committed a crime involving serious physical harm and was about to escape, the Officer's use of force was reasonable."

In this case, when Officer Torres shot Siler it was undisputed that: 1) Siler, ignoring the possibility of escape through the open garage door, had belligerently defied Officer Torres' command by daring Officer Torres to shoot him; 2) Siler stepped towards Officer Torres' while holding something in his hand, 3) Siler was a young man, significantly larger than Officer Torres, who had a reputation for physical violence, 4) Siler refused every opportunity to surrender during the chase, and critically, had decided to change the status quo of a standoff, and, 5) despite the fact that Officer Torres had his pistol in his hand, Siler became aggressive and Officer Torres reasonably believed he was at risk of being overcome and disarmed. Based on these facts, the court found that it was reasonable for Officer Torres to use deadly force against Siler to protect himself and the other individuals in the garage from the threat posed by Siler.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/19-1855/19-1855-2020-04-29.pdf?ts=1588190493>

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## **Eighth Circuit**

### **United States v. Johnson, 954 F.3d 1106 (8th Cir. 2020)**

A police officer stopped a van for following too closely to another vehicle. Sarkis Labachyan was driving and Sherman Johnson was in the front passenger seat. After Labachyan gave the officer his driver's license and the rental agreement for the van, the officer went back to his patrol car and conducted a record check. After the officer asked Labachyan where the men were heading, Labachyan told him that he and Johnson were going to Illinois to visit Johnson's Aunt Dorothy, who had recently been discharged from the hospital. The officer then returned to the van to speak to Johnson, whose name was on the rental agreement. Johnson told the officer that he and Labachyan planned to stop briefly in Lincoln, Nebraska and then travel to Illinois to visit his Aunt Jeanette.

Becoming suspicious, the officer returned to his patrol car to complete his record check. During the record check, the officer discovered that two months prior, Labachyan and Johnson had been stopped in a vehicle in Nebraska. During that stop, an officer had searched their vehicle and discovered a small amount of marijuana and \$19,000 cash.

After learning of this incident, the officer received consent from Johnson to search the van. The officer searched the van and discovered 6,000 grams of cocaine in the spare tire attached to the underside of the van. The government charged Johnson and Labachyan with possession with intent to distribute cocaine and conspiracy to possess with intent to distribute cocaine.

Labachyan filed a motion to suppress the statements he made to the officer while seated in the patrol car during the officer's record check. Labachyan claimed that his statements were inadmissible because the officer did not first provide him with Miranda warnings.

An officer is required to provide Miranda warnings whenever a person is subjected to custodial interrogation. Although a person is seized under the Fourth Amendment during a traffic stop, he is not in custody for Miranda purposes unless he is either formally arrested or "his freedom of action ha[s] been curtailed to a degree associated with [a] formal arrest," sometimes called the "arrest test."

In this case, the court held that Miranda warnings were not required because Labachyan was not in custody when questioned by the officer in the patrol car. The court found that the circumstances surrounding the questioning did not resemble a formal arrest as the officer asked Labachyan a modest number of questions and never indicated that Labachyan's detention would be anything other than temporary. The court added that it did not matter if the motivation behind the officer's questions was to discover evidence of criminal activity as a police officer's "unarticulated plan" has no bearing on whether a suspect is in custody for Miranda purposes.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/18-2929/18-2929-2020-04-02.pdf?ts=1585841421>

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### **United States v. Williams, 955 F.3d 734 (8th Cir. 2020)**

Police officers were dispatched to a Wal-Mart parking lot to assist with a "road rage" incident. Upon arrival, officers met with a woman who told the officers that another driver, later identified as Jamin Williams cut off her vehicle, then exited his vehicle, hit her driver's side window, and

threatened to shoot her. The woman described Williams' physical appearance and provided the officers with the make, color, and license plate of his car.

Based on these descriptions, the officers located Williams near his vehicle outside the Wal-Mart. The officers decided to frisk Williams. Williams admitted to telling the woman that he had a gun and threatening her, but he denied having a firearm. The frisk did not reveal a weapon. Afterward, one of the officers asked Williams for his identification. Williams told the officer that his identification was in his car. When Williams opened the driver's side door, the officer smelled an odor of marijuana emanating from the vehicle. After the officer told Williams about the smell of marijuana and that he was going to search the car, Williams ran from the parking lot. The officers searched Williams' car and found a handgun and more than 400 grams of marijuana.

The government charged Williams with drug and firearms-related offenses. Williams conceded that the officers had reasonable suspicion to detain him initially. However, Williams claimed that the officers violated the Fourth Amendment when they continued to detain him after they frisked him and determined that he did not possess a firearm and then by searching his vehicle.

The court disagreed. First, the court held that the officers lawfully continued their investigation after they determined Williams was not carrying a gun because during the frisk Williams admitted to threatening to shoot a woman. The court found that the officers had reasonable suspicion that Williams had committed harassment in violation of Iowa law. Consequently, the court concluded that the officer's request for Williams' identification was a reasonable and lawful extension of the initial investigatory stop.

Next, the court held that the officers had probable cause to search Williams' car because one of the officers smelled marijuana when Williams opened the car door. During a lawful investigatory stop, officers may search a vehicle when they develop probable cause that it contains contraband or evidence of criminal activity. The court added, "we have repeatedly held that the odor of marijuana provides probable cause for a warrantless search of a vehicle under the automobile exception."

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/19-1827/19-1827-2020-04-09.pdf?ts=1586446223>

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### **United States v. Sanders, 956 F.3d 534 (8th Cir. 2020)**

An eleven-year old girl, N.R., called her grandmother and said that her mother, Karina LaFrancois and her mother's boyfriend, Kenny Sanders were "fighting really bad" and that "they needed someone to come." The grandmother called 911, reported what N.R. had told her and told the operator that two additional minor children, ages seven and one, were inside the residence.

When officers arrived at LaFrancois' house, one of them saw N.R. "acting excited" and gesturing through an upstairs window. The officers knocked on the front door and LaFrancois came outside to talk to them. LaFrancois told the officers that everything was okay, even though LaFrancois was visibly upset and had red marks on her face and neck. The officers told LaFrancois that they needed to talk to Sanders. LaFrancois offered to have Sanders speak with the officers outside. The officer initially agreed to allow LaFrancois to go inside and get Sanders; however, when she opened the door, the officers heard crying inside. At that point, the officers decided to enter the house to make sure that everyone was safe.

Upon entering, the officers saw Sanders and LaFrancois standing just inside the doorway and a crying infant located in a nearby playpen. One of the officers went upstairs to check on N.R. while another officer directed Sanders to sit on the couch. N.R. told the officer that during the fight with Sanders, she heard her mother yelling, "Put the gun down!" N.R. told the officer that the gun might be in a specific drawer downstairs. The officer checked the drawer but he did not find a gun. The officer then spoke with LaFrancois who stated that the gun might be "in the couch." The officer asked Sanders to get off the couch and discovered a handgun in the couch cushions.

The government charged Sanders with possession of a firearm by a prohibited person, in violation of 18 U.S.C. §§ 922(g)(1), 922(g)(9), and 924(a)(2). Sanders argued that the officers' warrantless entry into the house and the search of his couch for the gun violated the Fourth Amendment.

The court disagreed. The court held that the warrantless entry into the house was reasonable under the community caretaking exception to the Fourth Amendment's warrant requirement. Since 2006, the Eighth Circuit has recognized that the community caretaking exception allows a police officer to "enter a residence without a warrant as a community caretaker where the officer has a reasonable belief that an emergency exists requiring his or her attention."

In this case, the court held that based on the facts known to the officers, to include: 1) the information from the 911 call, 2) the officers' observations when they arrived, and 3) the information provided by N.R. and LaFrancois, it was reasonable for the officers to believe that an emergency situation existed that required their immediate attention by entering LaFrancois' home to ensure that no one inside was injured or in danger.

The court further held that exigent circumstances justified the officer's search to locate and secure the gun because: 1) "domestic disturbances are highly volatile and involve large risks," 2) the officer had an objectively reasonable belief that a gun was inside the house, and 3) the officer limited his search to areas where the gun might have been placed.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/19-1497/19-1497-2020-04-14.pdf?ts=1586878220>

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**Franklin v. Franklin County, 956 F.3d 1060 (8th Cir.)**

A police officer arrested Cody Franklin after receiving a call that Franklin walking along a road acting "bizarrely," and "swinging a stick like a sword." A few hours later, an officer decided to relocate Franklin in confinement from the general population pod to an isolation pod because Franklin was fighting with other inmates and appeared to be under the influence of drugs. When the officer opened the door to the pod and asked Franklin to go with him, Franklin refused, dropped into a combative stance, and challenged the officer to fight him. The officer declined to fight Franklin who then threw things at the officer and tried to pull him into the pod.

Officer Nathan Griffith, who had arrived to help move Franklin, intervened and wrestled Franklin to the floor. After Franklin kicked Officer Griffith off and stood up. Officer Griffith shot Franklin with his taser and Franklin fell to the floor. Officer Griffith ordered Franklin to remain on the floor but Franklin attempted to stand up. Officer Griffith shot Franklin with his taser again, and possibly three more times, but it ultimately had no effect upon Franklin who continued toward the



officers. The officers wrestled Franklin to the ground, handcuffed him, and moved him to the isolation cell.

At this point, Sergeant Joseph Griffith arrived and the three officers tried to remove Franklin's handcuffs before securing him in the isolation cell. With Franklin lying face down on the floor, the three officers used their weight to subdue him, but he continued to struggle. Sgt. Griffith warned Franklin that he would use his taser if Franklin continued to resist. After Franklin ignored this warning and continued to resist, Sgt. Griffith tased Franklin on drive-stun mode two or three more times until Franklin stopped fighting and relaxed his arms, thereby allowing the officers to remove his handcuffs. A few minutes later, the officers called for an ambulance and Franklin was transported to a local hospital where he died. The medical examiner found that Franklin's cause of death was "methamphetamine intoxication, exertion, struggle, restraint, and multiple electro-muscular disruption device applications."

Franklin's father sued Officer Griffith and Sergeant Griffith (the Griffiths), claiming, among other things, that they used excessive force in violation of the Fourth Amendment against his son. After the district court held that the Griffiths were not entitled to qualified immunity, they appealed.

The Eighth Circuit Court of Appeals held that the Griffiths acted reasonably under the circumstances, even if they tased Franklin on or about eight times. As a result, the court concluded that the Griffiths did not violate Franklins' right to be free from excessive force; therefore, they were entitled to qualified immunity. The court cited several case holdings which stated it was reasonable to tase violent, resisting arrestees multiple times; citing, one case with five taser deployments and another case with up to ten taser deployments. The court found that the Griffiths were justified in their use of force against Franklin because Franklin's aggression did not stop until after the final shot of the taser.

The court added that the fact that Franklin was tased three times in drive-stun mode while handcuffed was reasonable, as Franklin continued to resist the officers while he was in handcuffs. The court recognized that a handcuffed suspect can still pose a danger to the officers and that it has "allowed the use of tasers on detainees in handcuffs in appropriate circumstances."

Finally, the court found that the Griffiths' decision to remove Franklin's handcuffs before securing him in the isolation cell was reasonable. First, the Griffiths testified that they wanted Franklin to be able to move about the cell freely, as they were concerned that if Franklin remained handcuffed in his drug-influenced state he may have fallen while cuffed and possibly injure his arms, wrists or head. Next, the court found that it was reasonable for the Griffiths to be concerned that Franklin might be able to maneuver his hands and body in such a way as to use the cuffs as a weapon when someone entered the cell.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/19-1854/19-1854-2020-04-24.pdf?ts=1587742236>

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## **Tenth Circuit**

### **United States v. Mayville, 955 F.3d 825 (10th Cir. 2020)**

At approximately 1:45 a.m., a Utah Highway Patrol Trooper stopped a car for speeding. As the trooper approached the car, he saw the driver, John Mayville, hunched over in the vehicle as if he

was trying to hide something. When the trooper spoke to him, Mayville told the trooper that he was traveling from Arizona to Colorado. The trooper asked for Mayville's license, registration, and proof of insurance but the only document Mayville could produce was his out-of-state driver's license.

Seven minutes after the stop began, the trooper returned to his patrol car to fill out his paperwork for the stop. The trooper radioed dispatch to run a records check on Mayville, which consisted of two components: first, the trooper asked dispatch to run Mayville's license and check for warrants; second, the trooper requested Mayville's criminal history through the Interstate Identification Index, commonly referred to as a Triple I check. After contacting dispatch but before dispatch returned the results, the trooper requested a drug sniffing dog. The trooper then continued to work on the citation and attempted to determine to whom the vehicle belonged.

When another trooper arrived with a drug sniffing dog, they conducted a free-air sniff around Mayville's car. At approximately 2:05 a.m., the dog alerted to the odor of narcotics in the vehicle. Less than 30 seconds later, dispatch responded to the trooper's request with information indicating that Mayville had a criminal record. Approximately 19 minutes elapsed from the trooper's initial contact with Mayville to the alert by the drug sniffing dog.

The troopers searched Mayville's car and found methamphetamine, heroin, and two guns, one equipped with a silencer. The officers arrested Mayville, who was subsequently charged by the government with drug and firearm-related offenses.

Mayville claimed that the trooper's decision to run a Triple I criminal history check through dispatch was not reasonably related to the reason for the traffic stop; therefore, the trooper unreasonably extended the duration of the stop while he waited for the return from dispatch.

The court disagreed. First, the court noted that an officer's authority to detain a driver "ends when tasks tied to the traffic infraction are – or reasonably should have been – completed," unless "separate reasonable suspicion exists to justify further investigation." Second, the court recognized that one of the tasks tied to a traffic stop is checking the driver's criminal history, so long as the check does not unreasonably prolong the stop. As a result, the court held that the trooper was entitled to inquire into Mayville's criminal history during the traffic stop.

Mayville further claimed that the trooper's decision to request a Triple I check through dispatch rather than conduct the criminal history check on the computer in his patrol car was unreasonable.

Again, the court disagreed. The court concluded that even if the Triple I check prolonged the duration of the stop it was reasonable because: 1) the computer in the trooper's patrol car would have provided limited information with respect to out-of-state drivers such as Mayville, 2) the trooper developed concerns for his safety based on Mayville's apparent attempt to hide something as the trooper approached his car, and 3) Mayville's inability to provide registration paperwork for the vehicle. Given these circumstances, the court held that the trooper's decision to run a Triple I check through dispatch as opposed to limiting his records check to the computer in his patrol car did not unreasonably prolong the stop.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca10/19-4008/19-4008-2020-04-07.pdf?ts=1586277064>

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